IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH,

AT HYDERABAD

HON'BLE SRI JUSTICE V.V.S. RAO

W.P. No. 27011 OF 2005

Date: 22.12.2005

BETWEEN:

1. Uppala Veerabhadra Rao and others

…. PETITIONERS

And

The Municipal Corporation of Rajahmundry

Rep. by its Commissioner,

Rajahmundry, East Godavari District.

…. RESPONDENT

HONOURABLE SRI JUSTICE V.V.S. RAO

WRIT PETITION No. 27011 OF 2005

ORDER:

The seven petitioners are tenants of a tiled house bearing Door No.9-1-13, Water works street, Isaka Veedhi, 7th Ward, Rajahmundry. Aggrieved by the notice under Section 456 of the Hyderabad Municipal Corporations Act, 1955 (for short 'the Act'), as applicable to the Municipal Corporation of Rajahmundry, the respondent herein, calling upon the petitioners to pull down the premises within seven days from the date of receipt of the notice and further informing them that failure on their part would entail the Corporation pulling down the structure departmentally, the present writ petition is filed. The petitioners pray for *Writ of Certiorari* declaring the impugned notice/proceedings as illegal, arbitrary and unconstitutional, and for a consequential direction to the respondent to consider the representation, dated 19.9.2005.

The case of the petitioners in brief is as follows. The premises in question belongs to one B. Brahmanandam. It is alleged that the landlord has been trying to evict the

petitioners, and as the petitioners enjoy statutory tenancy, the landlord made a representation to the respondent Corporation requesting to pull down the premises on the ground that the same is in a ruinous condition. The petitioners assert that the building is in a good and habitable condition and there is no likelihood of collapse.

Having come to know about the representation made by the landlord, B. Brahmanandam, the petitioners made a common representation dated 19.9.2005 and the respondent did not pass any orders thereon. In the meanwhile, the landlord filed a writ petition being W.P.No.22924 of 2005 seeking a direction to respondent Corporation to pass appropriate orders on the representation made by him. By an order dated 25.10.2005, this Court disposed of the matter directing the respondent Corporation to issue notice to the tenants before taking an appropriate decision in the matter. The petitioners allege that in contravention of the orders of this Court, the respondent Corporation straightaway issued the impugned notice, which was not preceded by any notice as directed by this Court. The petitioners, therefore, filed the present writ petition contending that when the representation made by them is pending, without passing any orders thereon, the respondent Corporation cannot be permitted to demolish the structures.

This Court heard the submissions of the learned counsel for the petitioners and learned Standing Counsel for the Municipal Corporation of Rajahmundry, on 20.12.2005. Having regard to the submission that the officials of the respondent Corporation did not even inspect the premises before issuing notice, this Court directed the learned Standing Counsel to produce the relevant file before this Court. Accordingly, the learned Standing Counsel produced the file for perusal of this Court. It is now brought to the notice of this Court that on 20.12.2005 itself the petitioners filed a suit against the landlord and his wife, being O.S.No.1439 of 2005 on the file of the Court of the Junior Civil Judge, Rajahmundry for prohibitory injunction restraining them from interfering with the possession of the plaintiffs (petitioners herein) by way of demolition, except under due process of law. A Xerox copy of the plaint filed in the Civil Court is placed before this Court. A bare look at the same would show that the respondent Corporation herein was subsequently added in handwriting as proforma party before presentation of the suit on 20.12.2005, presumably after this Court decline to pass interim orders in this writ petition on 20.12.2005. Be that as it is, the learned Junior Civil Judge passed an ex parte ad interim order of injunction in I.A.No.1786 of 2005 in O.S.No.1439 of 2005 restraining the landlord and his wife (Rajahmundry Municipal Corporation is not a party respondent in the said I.A.) in any manner interfering with the petitioners' possession by way of demolition till 30.12.2005 subject to orders, if any, passed by this Court in this writ petition. The landlord and his wife are not made parties to this writ petition. In that view of the matter, it is very curious as to how the lower Court could have passed an order of injunction subject to order in this writ petition. Presumably, the order was passed either on misrepresentation by the petitioners herein or without applying mind and without properly verifying the factual matrix leading to filing of the suit, though the plaintiffs therein had already invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

Insofar as the main contention of the petitioners is concerned, the same is belied by

a perusal of the file bearing Roc.No.5510/05/G2. At page No.25 the E.O. note prepared by the City Planner would show that as ordered by the Commissioner, as many as 26 properties were identified, which are in dilapidated condition, for the purpose of issuing notice under Section 456 of the Act. At page No.50, the report of the Assistant Engineer of Engineering Wing is found. As per this report, the premises in question is at least 60 years old and was constructed with mud mortar. The building has developed cracks. The building with tiles has a weak structure and almost lost its life. This would belie any submission of the learned counsel that the respondent Corporation initiated action only on the representation of the landlord, who is bent upon evicting the tenants. If it were true, there would not have been any necessity for the Engineering and Planning Wings to identify as many as 26 properties in Rajahmundry Municipal Corporation for demolition under Section 456 of the Act. Insofar as the notice contemplated under Section 459 of the Act is concerned, this Court is of the considered opinion that this question need not be decided here, especially when the petitioners have already approached the Court of Junior Civil Judge, Rajahmundry. They can also raise the question in the main suit.

Further, though the petitioners allege that the building is in a good habitable condition and that it is only at the behest of B. Brahmanandam, the landlord, the respondent Corporation initiated action under Section 456 of the Act, curiously, the landlord is not made as a party. But petitioners approached the Civil Court on 20.12.2005 when this Court did not pass interim orders, would speak volumes about the conduct of the petitioners, who are blowing hot and cold. It is well settled that in the absence of aggrieved party, who is likely to be affected by the orders of this Court, no writ can be entertained [see **Prabodh Verma v. State of U.P., Ishwar Singh v. Kuldip Singh**, **Bhagwanti v. Subordinate Services Selection Board**, **J. Jose Dhanapaul v. S. Thomas**, and **Arun Tewari v. Zila Mansavi Shikshak Sangh**].

It is also well settled that the remedy under Article 226 is a discretionary remedy and a person seeking such remedy should approach the Court with clean hands without any attempt to make misrepresentation or false representation. In this case, the petitioners have made all sorts of attempts to prevent the demolition of the building in dilapidated condition, which is likely to endanger their lives, and obtained peculiar ad interim injunction order from the Civil Court even while the writ petition is pending. In this background, this Court is not inclined to pass any orders in favour of the petitioners.

The Writ Petition is accordingly dismissed at the admission stage. As the Court of Junior Civil Judge passed ad interim injunction order subject to orders in this writ petition, it shall be open to the Rajahmundry Municipal Corporation to demolish the structures immediately to prevent any damages for lives.

(**V.V.S. RAO, J.)**

22nd December, 2005

Note: Issue C.C. in one week

(By order) / Js.